



concerned citizens
for nuclear safety

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September 12, 2002

By U.S. Mail and
By fax to: (505) 827-2902

Geraldine Madrid-Chavez
Water Quality Control Commission
Room N-2153
P. O. Box 26110
Santa Fe, NM 87502

Re: Request for Hearing to Consider Proposed Revisions to
Statewide Water Quality Management Plan (WQMP)
Hearing Scheduled for October 1, 2002

Dear Ms. Madrid-Chavez:

Concerned Citizens for Nuclear Safety (CCNS) requests a hearing to consider the proposed revisions to the Statewide Water Quality Management Plan (SWQMP) before the New Mexico Water Quality Control Commission. The hearing has been scheduled for October 1, 2002.

CCNS submits its March 19, 2002 comments on the proposed revisions to the SWQMP for inclusion in the public hearing record.

Thank you for your consideration of our request.

Sincerely,

Joni Arends
Waste Programs Director

Enclosure

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SEP 12 2002
SURFACE WATER
QUALITY BUREAU



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for nuclear safety

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SEP 12 2002

SURFACE WATER
QUALITY BUREAU

March 19, 2002

By Email to glenn_saums@nmenv.state.nm.us
And By Mail to the Address Below:

Mr. Glenn Saums
Surface Water Quality Bureau
New Mexico Environmental Department
P. O. Box 26110
Santa Fe, New Mexico 87502

Re: Comments on the Proposed Revisions to the
Statewide Water Quality Management Plan

Dear Mr. Saums:

Concerned Citizens for Nuclear Safety (CCNS) makes the following comments on the proposed revisions to the required Section 208 of the Federal Water Pollution Control Act Statewide Water Quality Management Plan (WQMP).

CCNS was founded in 1988 to provide a voice for community concerns about the transportation of nuclear waste through New Mexico. CCNS is a grassroots organization and watchdog group that believes the public must be involved in the oversight of resource and waste issues, including water. Over the years, CCNS has participated in many formal and informal public forums addressing environmental and public health issues.

CCNS attended the February 6, 2002 Santa Fe meeting and reviewed the proposed elimination of the WQMP Introduction and the Public Participation Program (Work Element No. 11).

CCNS requests that the Introduction to the New Mexico Statewide WQMP be updated and retained as part of the WQMP. The background information found in the Introduction is very useful for understanding the history, development, and progress of the WQMP.

CCNS objects to the elimination of the WQMP Public Participation Program (Work Element No. 11). It should be retained and re-numbered as Work Element No. 10 - Public Participation Program.

Under the federal regulations for developing water quality management plans, public participation procedures are one of the essential components of a state program under the groundwater element. 40 CFR §130.6(c)(9)(v). However, no public participation procedures are included in the proposed revisions for Ground water (Work Element No. 9). New Mexico is required to include public participation procedures in the Statewide WQMP. The proposed changes do not include any public participation procedures.

CCNS understands that the Public Participation Program elements have been incorporated into other water planning documents. In our limited review of the documents, we have been unable to find them.

Public participation is essential in our post 9-11 world. Since 9-11, public documents have been removed from websites and reading rooms, thus limiting the public's ability to participate in decisionmaking. Just last week, industry representatives opposed proposed expanded public notification requirements for groundwater discharges before the Water Quality Control Commission. Both of these examples support the need for the WQMP Public Participation Program. As stated in Work Element 11:

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What is meant by the term "public participation"? It goes beyond public relations; it encompasses education, the dispensing of information, and more importantly providing for public involvement and feedback regarding the water quality plan.

Encouraging meaningful public participation in water quality programs is an ongoing effort and part of the state's continuing planning process.

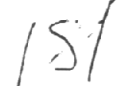
The Public Participation Program includes advisory bodies, a mailing list, newsletters, public presentations, mini-libraries, traveling exhibits, a photography contest, children's booklets, and specific activities of the League of Women Voters - all important efforts to educating and obtaining feedback about the statewide water quality plan.

As the drought continues, water issues will be discussed at all types of forums, including government meetings. The Statewide WQMP is a key water quality planning document. Information must be available and accessible to the community so that informed policy decisionmaking happens in the "sunshine."

Eliminating the WQMP Public Participation Program would violate the water quality management plan regulations. 40 CFR §130.6(c)(9)(v). A positive step would be to retain the existing WQMP Work Element No. 11 language, and in a timely manner, form an advisory board to advise the Surface Water Quality Bureau about updating the language. CCNS volunteers to serve on the advisory board.

Thank you for your consideration of CCNS's comments. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Joni Arends
Waste Programs Director

Subject: LANL Comments -- Draft Watershed Mangement Plan

Date: Thu, 12 Sep 2002 12:02:55 -0600

From: wardwell@lanl.gov

To: glenn_saums@nmenv.state.nm.us

Dear Mr. Saums,

Attached are LANL's comments on the above plan.

I would appreciate a reply email confirming receipt of these comments.

A paper copy will be delivered to your office this afternoon.

(See attached file: WaterQualityManagementPlanCommentsFinalSept1202.doc)

(See attached file: saladen memo.pdf)

Phil Wardwell

Office of Laboratory Counsel

Environment, Safety and Health Practice Group

Mail Stop A 187

Telephone 505 667 3766

Fax 505 665 4424



[WaterQualityManagementPlanCommentsFinalSept1202.doc](#)

Name: WaterQualityManagementPlanCommentsFin

Type: Microsoft Word Document (application/msw

Encoding: base64



[saladen memo.pdf](#)

Name: saladen memo.pdf

Type: Acrobat (application/pdf)

Encoding: base64



Risk Reduction & Environmental Stewardship Division
Water Quality & Hydrology Group (RRES-WQH)
PO Box 1663, MS K497
Los Alamos, New Mexico 87545
(505) 665-6085-/Fax: (505) 665-9344

Date: September 12, 2002
Refer to: RRES-WQH: 02-349

Mr. Glenn Saums
Surface Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502

SUBJECT: LOS ALAMOS NATIONAL LABORATORY COMMENTS ON STATE OF NEW MEXICO STATEWIDE WATER QUALITY MANAGEMENT PLAN

Dear Mr. Saums:

Los Alamos National Laboratory submits the attached comments on the "State of New Mexico Statewide Water Quality Management Plan, August 1, 2002". Many of the comments previously provided to your office on March 1, 2002 have been addressed. Please note that the EPA has issued (August 30, 2002) additional guidance regarding representative compliance sampling (Work Element 10) since our meeting of July 25, 2002. Accordingly, we have modified our position on this matter. We will recommend alternative language as discussed in the attached comments. More specific language will be provided in our written testimony and at the public hearing on October 1, 2002.

Attachment A contains the Laboratory's general and specific comments on the draft plan. The Laboratory would like to compliment the Surface Water Quality Bureau on the new format of the *State of New Mexico Statewide Water Quality Management Plan*. The format, wherein many documents are incorporated by reference and electronically linked, is very helpful. This innovative approach is highly commendable and is likely to serve as a model for other states. The Laboratory strongly supports this approach for this document and other policy documents (e.g. Continuing Planning Process, Nonpoint Source Management Program) as they are updated.

If you have any questions regarding the enclosed comments, please call me at (505) 665-6085.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Saladen'.

Mike Saladen

Water Quality & Hydrology Group

MS/am

Enclosures: a/s

Cy: J. Davis, NMED-SWQB, Santa Fe, N. M., w/o att.
L. Rose, Montgomery & Andrews, P.A., Santa Fe, N. M., w/att.
J. Vozella, OLASO, w/o att., MS A316
G. Turner, OLASO, w/att., MS A316
L. Cummins, OLASO, w/att., MS A316
B. Ramsey, RRES-DO, w/o att., MS J591
K. Hargis, RRES-DO, w/o att., MS J591
D. Stavert, RRES-EP, w/o att., MS J978
S. Rae, RRES-WQH, w/att., MS K497
T. Sandoval, RRES-WQH, w/o att., MS K497
K. Mullen, RRES-WQH, w/att., MS K497
C. Nylander, RRES-GP, w/att., MS M992
K. Bitner, Neptune & Co., Albuquerque, N. M., w/att.
Richard Meyerhoff, CDM, Phoenix, AZ, w/att.
P. Wardwell, UC-GEN, w/att., MS A187
D. Woitte, UC-GEN, w/att., MS A187
RRES-WQH File, w/att., MS K497
IM-5, w/att., MS A150

Attachment A
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan,
dated August 1, 2002, and on Proposed Work Element 10, dated July 25, 2002

General Comments

- 1) While LANL continues to adhere to the positions adopted in its earlier comments, LANL appreciates NMED's consideration and responses to these comments.
- 2) Work Element 10 is not incorporated into the WQMP dated August 1, 2002 currently on NMED's website. Work Element 10, dated July 25, is a separate document. Work Element 10 states in part "The standards, at subsection A of 20.6.4.11 NMAC establish that compliance with acute water quality standards shall be determined from the analytical results of a single grab sample. The recent action by the WQCC concerning human health priority toxic pollutants also relies on grab sample techniques to determine standards compliance. Accordingly, specification of this technique is appropriate." Comments on Work Element 10 are included below, as requested by the Water Quality Control Commission during their regular business meeting on August 13 2002.

Specific Comments

Note: comments on Work Element 10 are new. New material from previous comments is in bold.

- 1) Work Element 1, Page 15

This work element should include a description of the prioritized TMDL activities and issues that will be the focus of the coming years work as required in 40 CFR 130.6(b). Although the strategy refers to the schedule in the consent decree for TMDLs, there is also mention of negotiated grant commitments and the option for the State to work on any TMDL that it may find necessary and appropriate. **The negotiated grant commitments should be either be listed in this document or a link the to list be provided. The criteria that would determine a necessary or appropriate TMDL should either be listed or incorporated by reference.**

- 2) Work Element 2, Page 22

Elements 2, 3, and 4 of the strategy are EPA responsibilities, and it is not clear why they are part of the strategy for New Mexico. **These strategic elements should be reworded to indicate what the State's role in these elements is, if any.**

- 3) Work Element 4, Page 26

This work element description should be expanded to include the use of Best Management Practices controlling for nonpoint source pollution and the use of voluntary programs for controlling nonpoint source pollution in New Mexico. It should also describe the funding for nonpoint source pollution control activities. **Such an expanded**

Attachment A
Los Alamos National Laboratory Comments on
Draft State of New Mexico Statewide Water Quality Management Plan,
dated August 1, 2002, and on Proposed Work Element 10, dated July 25, 2002

description should be comparable to the description in Work Elements 1 and 2, a concise broad overview of the program.

4) Work Element 6, Page 32

The "Background" section of this work element points out the importance of having a schedule for implementing water pollution control activities and describes three important constraints for developing such a schedule. This is particularly important because the Continuing Planning Process document referenced in the "Strategy" section of this work element also does not contain an overall schedule of water pollution activities. **This section should include such a schedule or reference to where a schedule exists.**

5) Work Element 10

Work Element 10 was crafted to identify the criteria that must be met before samples are deemed to be "representative grab samples" within the meaning of 20.2.9.11.D NMAC. Those samples are to be used to determine compliance with the recently adopted human health criteria (20.6.4.900 M NMAC), in enforcement actions under the Water Quality Act, NMSA 1978 §74-6-10 (1993) (state standards are directly enforceable through administrative and judicial means) and in the designation of stream segments as being water quality limited in the 303(d) list. Designation of segments in the 303(d) list requires the state to develop TMDLs for those segments.

The National Resource Council in their report Assessing the TMDL Approach to Water Quality Management (2001) recognizes the importance of sampling to represent the variability within the water body: "The requirement of "no exceedances" for many water quality criteria is not achievable given natural variability alone, much less with the variability associated with discharges from point and nonpoint sources" (p. 50).

LANL endorses the National Research Council (2001) recommendation that water quality criteria consist of a frequency, magnitude, and duration:

"In the context of a pollutant, the *magnitude* refers to how much of a pollutant can be allowed in the water while still achieving the designated use. The magnitude can be chosen to protect against either acute or chronic effects of a pollutant. *Duration* refers to the period of time over which measurements of the pollutant are considered. Pollutant levels may be averaged over some number of hours or days to determine that amount of pollutant that can be present without loss of the designated use. The allowable *frequency* at which the criterion can be violated (called an excursion) without a loss of the designated use must also be considered.....Establishing these three dimensions of the criterion is crucial for successfully developing water quality standards". (p. 45)

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In their report, the National Research Council (2001) recommended that “EPA should endorse statistical approaches to proper monitoring design, data analysis, and impairment assessment” (p. 61). Accordingly, the EPA released in 2002 the Consolidated Assessment and Listing Methodology (CALM). This document addresses the issue of attainment decisions as follows:

“EPA does not recommend making decisions based on small data sets of water column chemistry for attainment. Therefore, in the overwhelming majority of WQS scenarios, an approach based on probability sampling, in which states define an acceptable probability of decision error, will be preferred” (p. 4-15).

The CALM addresses human health criteria directly: “When a chemical human health criterion is applied to WQS attainment decisions, EPA recommends comparing the mean (or geometric mean if appropriate for a skewed data set) of the measured concentrations with the criterion” (p. 4-7).

LANL recommends that Work Element 10 be revised, at a minimum, to encompass the frequency, magnitude, and duration in establishing the compliance requirements. Further, LANL suggests that Work Element 10 be based on statistical methods, following the recommendations of the National Research Council in Assessing the TMDL Approach to Water Quality Management (2001) and the EPA guidance in the CALM.

6) Work Element 10

LANL recommends that the sampling methods specified for human health criteria produce samples that are representative of chronic exposure. In the EPA’s Revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (Federal Register, Vol. 65, No. 214, p. 66450, 11/3/00), EPA states:

“Human health criteria represent ambient pollutant concentrations that are acceptable based on a lifetime (70 years) of exposure. Accordingly, discharges of pollutants should be regulated such that criteria will not be exceeded under stream conditions that represent long-term average conditions”.

For example, one of the persistent toxic pollutants is PCBs. At the threshold concentration specified by the standards, it is not an acutely toxic substance to humans. There is no evidence that humans would experience health effects from drinking some water containing a concentration of PCBs of 17 ten-thousandths of a part per billion (0.0017 micrograms per liter). Further, there is no evidence that humans would experience health effects from eating a fish that had lived for one hour in water with a concentration of 0.0017 micrograms per liter. The human health effects are chronic,

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produced by drinking such water for a period of 70 years, or eating fish for 70 years that had constantly lived in water with such concentrations.

Consequently, it is important in testing for levels of contaminants that produce chronic effects, to use methods that produce water samples that truly are representative of water quality over long periods of time. A sample taken in the first 30 minutes of a rain event in an ephemeral stream may produce results that are representative of *maximum* levels. Contaminant concentrations are almost always higher during the "first flush." However, this sample will not be representative of contaminant levels during the *entire flow*. EPA has indicated that States have the authority to develop standards that address the issues surrounding applying human health criteria to ephemeral streams. In the 2000 Notice of Revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (Federal Register, Vol. 65, No. 214, p. 66455, 11/3/00) EPA addressed a comment regarding criteria applying in ephemeral conditions with the following response:

"EPA believes there is sufficient flexibility in the current regulatory program for States to modify designated uses and water quality criteria to address conditions that exist in waterbodies such as intermittent streams and washes."

In designing sampling methods to obtain representative samples, it is important to be mindful of these considerations, and to consider the statistical principles as set forth in EPA's guidance (CALM, etc.)

7) Work Element 10

A general concern about the proposed new Work Element 10 is that the *Statewide Water Quality Management Plan* is not the appropriate place for this discussion. As noted in the General Comments above, by regulation, the Water Quality Management Plan is intended to be "**What** we are doing" and the Continuing Planning Process is intended to be "**How** we will do it". The Work Element 10 description of how sampling will be performed is part of the "**How**" and therefore is more appropriately included as part of the *State of New Mexico Continuing Planning Process*. LANL recognizes that the WQCC directed that this description appear in the WQMP, in 20.6.4.11.D NMAC.

8) Work Element 10

The word "representative" is used loosely in Work Element 10. For example, the final paragraph of the first page states, "A grab sample shall be considered a representative grab sample when the analytical results of that sample have been confirmed as unbiased and reproducible by comparison to the analytical results of a second grab sample." The question that is begged in this statement is, "Representative of what?" Unless the conditions of the population to be sampled are defined in sufficient detail, it is impossible to determine whether the sampling approach described in Work Element 10 will result in

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“representative” samples. For instance, the EPA *NPDES Storm Water Sampling Guidance Document* provides the following criteria for the type of storm water that must be sampled:

- The depth of the storm must be greater than 0.1 inch accumulation
- The storm must be preceded by at least 72 hours of dry weather
- Where feasible, the depth of rain and duration of the event should not vary by more than 50 percent from the average depth and duration.

In short, the word “representative” is meaningful only in the context of a clear description of the conditions that the samples are intended to represent.

9) Work Element 10

Work Element 10 should address the collection of a representative grab sample from a perennial water body. Sample design and sampling techniques for storm water as described in *NPDES Storm Water Sampling Guidance Document* are not appropriate for sampling in perennial streams or lakes.

10) Work Element 10

With respect to the statement that the sample will be “...confirmed as unbiased...by comparison to the analytical results of a second grab sample,” it is not possible to determine whether a measurement is biased by collecting a second sample. If there is a bias operating in the measurement system, it is likely to affect the second sample as well as the first. Bias is typically evaluated by comparison of a measured value to a “known” value.

11) Work Element 10

Work Element 10 is unclear about exactly what comparison(s) will be performed to determine whether the second sample has confirmed the first. For instance, what degree of difference between the measured values of a given constituent will be considered acceptable? And if the second sample produces comparable results for some constituents but not for others, will the first sample be considered “representative” for certain constituents but not for others? The test(s) that will be used to compare data need to be clearly defined.

Regardless of the test(s) employed, the issue of representativeness becomes even more complicated for an ephemeral stream. It is highly unlikely that samples taken 15 minutes apart on an ephemeral stream will be similar enough to be confirmed as representative. This is because the water quality varies significantly over the course of a storm flow event.

12) Work Element 10

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The "Strategy" section talks about taking a minimum of two samples to determine compliance. It is stated earlier that it is the policy of the SWQB that a minimum of two samples shall be used to determine if a particular sample is "representative". Does that mean that four samples must be collected because each would have an associated QC sample to ensure its "representativeness"? This section should be clarified to avoid misinterpretation of the requisite number of samples.

13) Work Element 10

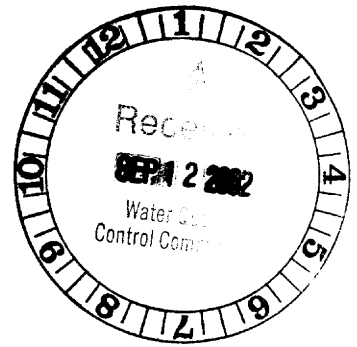
The cited WQCC language indicates that human health standards shall not be exceeded. This simple statement does not define the human health standards of interest (e.g., acute or chronic). No metrics are provided for how comparisons with human health criteria will be made (e.g., mean concentration or concentration in each sample). The "Strategy" section of Work Element 10 provides some clarification, but does not account for magnitude of results or uncertainty (sampling and measurement error).

The NMAC reference in Work Element 10 is to establishing compliance with an acute standard when it states "compliance with acute water quality standards by comparison with the results of a single grab sample." Collection of environmental data only to measure acute effects does not provide adequate assurance of human health protection. As indicated in several EPA guidance documents on risk assessment, average concentrations should be compared to human health risk thresholds for assessing chronic human health risk. Collection of a single grab sample, as expressed in the NMAC reference, is insufficient to characterize potential acute or chronic risks from surface water, because a single sample cannot reflect sampling or measurement error, let alone temporal or spatial trends. Collecting two grab samples is an improvement, but the language of Work Element 10 still implies reliance on a single result.

14) Work Element 10

In general, the larger the number of samples collected the more accurately the analytical results represent the true concentration. This concept is described and illustrated in the Quality Assurance Project Plan for Water Quality Management Programs 2002. Table 7.1 of this document shows the how the probability of detecting an exceedance of standards changes with the number of samples collected. In the narrative of this document it states: "As can be seen from examining the probability distribution above, a sample size "n" of 37 is necessary to achieve a 90 percent confidence level that a single occurrence of a standards exceedance will be detected if such exceedances are actually occurring 10 percent of the time". Based on Table 7.1, with a sample size of n=2, there is only a 25% confidence level of detecting an exceedance that occurs 50% of the time. Thus, the collection of more samples can increase the probability of detecting exceedances of the standards and should be considered in specifying the sampling requirements in Work Element 10.

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



WQCC 02-01(R)

IN THE MATTER OF PROPOSED REVISIONS
TO THE NEW MEXICO STATEWIDE WATER
QUALITY MANAGEMENT PLAN

BOARD OF REGENTS OF THE UNIVERSITY OF CALIFORNIA'S
REQUEST FOR HEARING

The Board of Regents of the University of California, on behalf of the Los Alamos National Laboratory, ("the Laboratory"), pursuant to the Commission's Notice of Public Comment Period and Hearing to Consider Proposed Revisions to the Statewide Water Quality Management Plan, hereby requests a public hearing on the New Mexico Environment Department's proposed revisions to the Plan.

Respectfully submitted,

BOARD OF REGENTS OF THE UNIVERSITY
OF CALIFORNIA

By: _____

LWR
Louis W. Rose
Montgomery & Andrews, P.A.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873

Deborah K. Woitte, Esq.
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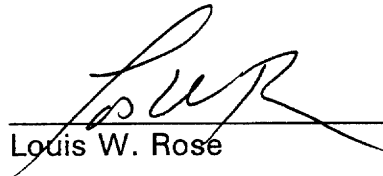
Attorneys for the Board of Regents of the
University of California

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **Board of Regents of the University of California's Request for Hearing** to be mailed first class or hand-delivered on September 12, 2002 to the following:

Eric Ames, Esq. (by hand delivery)
Assistant General Counsel
New Mexico Environment Department
1190 St. Francis Dr. Santa Fe, NM 87502

Jolene L. McCaleb, Esq. (by mail)
Wolf, Taylor & McCaleb, P.A.
P.O. Box 30428
Albuquerque, NM 87190



Louis W. Rose

Subject: Comments on the WQMP

Date: Thu, 12 Sep 2002 09:48:10 -0600

From: Chris Mechels <cmechels@att.net>

Organization: Retired


To: glenn_saums@nmenv.state.nm.us

Glenn,

Attached please find my comments. They are in MS Word 6.0

Regards,

Chris Mechels

 working comments.doc	Name: working comments.doc Type: Microsoft Word Document (application/msword) Encoding: base64
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September 12, 2002

Mr. Glenn Saums
NMED SWQB
P.O. Box 26110
Santa Fe, NM 87502

Dear Sir:

The purpose of this letter is to provide input on the proposed revisions to the Surface Water Quality Management Plan (Plan) for consideration by the WQCC which is hearing the request for revision.

My comments on the Plan follow:

1. I believe that the proposed revisions should be rejected because the NMED has not met its obligation to involve the public in development of the revisions. This failure is in two forms.

a. First, the NMED did not use suitable materials for briefing the revisions. Such materials should have included, among other things, an overview of the Plan and a comparison of the revisions with the current Plan. Instead, the NMED chose to use the briefing materials which they had prepared to brief the WQCC on the revisions. As the WQCC is an "expert" body on the development and content of the Plan, these materials were, as one would expect, inappropriate and confusing for an audience comprised of the "general public". I can personally testify to how confusing I found the NMED briefing held in Santa Fe. The only remedy for effectively excluding the public from the process, by failure to provide proper briefing materials or a suitable level of explanation, would seem to be the development of appropriate briefing materials and a new series of public briefings. This should be done with a new revision which addresses the many other problems with the proposed revisions.

b. Second, the NMED did not meet its commitments, made at the April 2002 WQCC meeting, to meet with members of the public who had problems/issues with the proposed revisions in an attempt to resolve their concerns. The meetings were not held. Instead, the NMED made some minimal changes, which were put forth as meeting the concerns of the public; did not discuss these changes with the public; and brought the revisions to the WQCC for approval. This failure of the NMED to address public concerns in a consultative manner, which NMED had committed to, constitutes a failure by NMED to observe the Plan updating process defined within the Continuing Planning Process (CPP). The remedy for this failure is to involve the public in good faith discussions about their concerns, meeting the commitment that NMED made in April. This should be done after suggested changes to the revisions, and after the new round of public briefings necessary to address the aforementioned problems.

2. The proposed Plan does not meet an essential requirement, made clear in the April 9, 2001 letter from NMED's Dr. James Davis to EPA's Mr. Tim Herfel, "*The final Plan will be designed to provide easily accessible information to ... the interested public in an efficient and effective manner.*" The proposed Plan fails to provide "easily accessible information" to the public as follows:

- a. The Plan fails to provide any adequate explanation of its function or purpose. The “Introduction” of the earlier Plan contained ten pages explaining the Plan and its environs. The revised Plan contains an “Introduction” of just over one page and that page is mostly comprised of citations from 40 CFR 130. The Code of Federal Regulations has never been a suitable vehicle to inform the general and it is certainly not “easily accessible”. A suitable introduction needs to be provided, with input from the public as to its being “easily accessible”.
- b. The Plan is overly reliant on a provision of 40 CFR 130.6(c) which states that the nine required elements may be “*referenced as part of the Plan if contained in separate documents*”. Using such “references” the Plan has been “hollowed out” to the point that it is unintelligible. Referencing other documents is a useful and common technique, but one does not typically “hollow out” the Root Document, i.e. the Plan. While it is common to reference “up” from the Root Document, e.g. the EPA documents and the CWA, one does not reference “down”. If duplication exists it should be removed from “lower” documents in the hierarchy, with references up to the Plan, which is the Root Document. By “hollowing out” the Plan, the Root Document in the hierarchy, confusion has been assured, especially for the general public. The solution is to provide the required information within the Plan without “downward” references. This will require a substantial rewrite, but the resultant document must meet the requirement of informing the public.
3. The Plan revision is cast as a dialogue between the NMED and the EPA. Work Element 4, for example, cites a full page of 40 CFR 130.6 and then proceeds to argue that the NMED actions meet the requirements of these regulations. This approach is known as “rote compliance” and it verges on “malicious compliance”. The whole Plan becomes an argument with the EPA, to prove that NMED is in compliance. This approach does nothing to inform the public, thus defeating a main purpose of the Plan. The public is excluded. The revisions to the Plan need to be totally recast and rewritten, with the NMED obligation to inform/involve the public addressed. “Rote compliance” is simply a minimal, irresponsible, approach to updating the Plan. Exhaustive web browsing reveals no other state resorting to “rote compliance” in their Plans. The WQCC should not accept this “cheap shot” in their name. The NMED should be directed to rewrite the Plan, and to concentrate on making it a useful document, informative and intelligible to the public, as intended by the CWA.

In summary, the proposed revision to the Plan should not go forward. The approach used by the NMED results in a document which has been “hollowed out”, with the result that the public will find it very difficult to use and understand. Therefore, the document is likely to be useless, except to serve as an example of “rote compliance”. Surely we can do better than this. The NMED has also failed their responsibility, within the CPP defined Plan update process, to inform and involve the public in the update process. They used briefing documents which served to confuse, not inform, the public.

The WQCC should reject the proposed Plan revision due to the inappropriate approach used; the lack of information, such as an introduction, which would serve to inform the public; and the totally inadequate “outreach” efforts date.

The citizens of this state deserve an adequate Plan, not this administrative end run.

Thank you for your attention to this matter.

Sincerely Yours,

Chris Mechels
Retired LANL (1994)
1336 Bishops Lodge Rd.
Santa Fe, New Mexico 87506
505-982-7144

COPY

BEFORE THE NEW MEXICO WATER QUALITY CONTROL COMMISSION

**IN THE MATTER OF PROPOSED REVISIONS
TO THE NEW MEXICO STATEWIDE WATER
QUALITY MANAGEMENT PLAN**



REQUEST FOR HEARING

COMES NOW the San Juan Water Commission ("SJWC"), by and through its counsel, Wolf, Taylor & McCaleb, P.A., and pursuant to the directives set out in the New Mexico Water Quality Control Commission's Notice of Public Comment Period and Hearing to Consider Proposed Revisions to the Statewide Water Quality Management Plan ("WQMP"), hereby requests a public hearing on the New Mexico Environment Department's proposed revisions to the WQMP. SJWC further requests that the public hearing be scheduled for October 1, 2002, as provided in the aforementioned public notice.

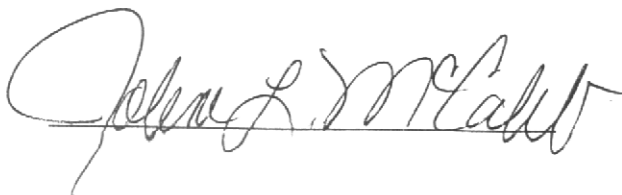
Respectfully submitted,

WOLF, TAYLOR & MCCALED, P.A.

By: 
Jolene L. McCaleb

P.O. Box 30428
Albuquerque, NM 87190
(505) 888-6600

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to counsel for the New Mexico Environment Department, Eric Ames, this 11th day of September, 2002.



RECEIVED

SEP 12 2002

SURFACE WATER
QUALITY BUREAU

Subject: SJWC Comments on Draft Water Quality Management Plan

Date: Wed, 11 Sep 2002 16:10:17 -0600

From: Jolene McCaleb <JMcCaleb@wtmlawfirm.com>

To: "glenn_saums@nmenv.state.nm.us" <glenn_saums@nmenv.state.nm.us>

CC: "Randy Kirkpatrick" <randysjwc@cyberport.com>,
"San Juan Water Commission (San Juan Water Commission)" <sjwc@cyberport.com>,
"Tom Pitts" <tpitts@waterconsult.com>

Mr. Saums: Pursuant to the public notice of a 30-day comment period for proposed revisions to the Statewide Water Quality Management Plan, I hereby submit the attached letter/comments for consideration by NMED. I also am sending a hard copy of the letter/comments in the mail, which you should receive tomorrow.

Thank you for your consideration of the attached comments.

<<2002Sep11 Letter to NMED re Comments on Revised Draft WQMP.doc>>

Jolene L. McCaleb

Attorney

Wolf, Taylor & McCaleb, P.A.

Email: jmccaleb@wtmlawfirm.com

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[2002Sep11 Letter to NMED re Comments on Revised Draft WQMP.doc](#)

Name: 2002Sep11 Letter to NMED re
Comments on Revised Draft
WQMP.doc

Type: Microsoft Word Document
(application/msword)

Encoding: base64

September 11, 2002

Glenn Saums
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502

Via e-mail(glenn_saums@nmenv.state.nm.us) and U.S. mail

Re: Comments of San Juan Water Commission on Draft Revisions to Statewide Water Quality Management Plan

Dear Mr. Saums:

Pursuant to the public notice of a 30-day comment period for proposed revisions to the Statewide Water Quality Management Plan ("WQMP"), I hereby submit the following comments to the New Mexico Environment Department ("NMED") on behalf of the San Juan Water Commission ("SJWC").

First, let me state that the SJWC commends NMED's efforts to safeguard water quality throughout the state. In addition, the SJWC appreciates all of the hard work NMED has put into revising and updating the WQMP and making it accessible to the public at large.

Second, with regard to specific provisions of the draft WQMP, the SJWC does have some significant concerns about Work Element 8 ("Basin Plans") and Work Element 10 ("Determination of Compliance with Water Quality Standards for the Protection of Human Health Criteria"). The purpose of this letter is to identify those concerns and request that NMED, and ultimately the Water Quality Control Commission ("WQCC"), revise the Draft WQMP in a manner that will alleviate the SJWC's concerns.

Work Element 8. As stated in Randy Kirkpatrick's February 26, 2002 letter to NMED commenting on the previous draft of the WQMP, the SJWC urges both NMED and the WQCC to manage water quality on a basin-wide or watershed basis rather than on a state-wide basis. The SJWC's position is based on the fact that appropriate water quality management and planning cannot occur without explicit consideration of local water quality conditions and local economic and social issues. Although the state has chosen to do water planning on a state-wide basis since the 1980s, the state should not continue along that path given the varied environmental, social and economic circumstances facing watersheds throughout New Mexico. Despite NMED's position that such a change to existing policy "should be addressed in its own

separate forum,” *see* Draft WQMP at 40, the SJWC believes that there is no better time to address this issue—if not now, when the WQMP is being significantly revised for the first time in more than 20 years, then when?

For all of these reasons, the SJWC urges NMED, and the WQCC, to revise Work Element 8 to include the development of basin plans, as contemplated by 40 C.F.R. §130.51(a) (water quality planning should have a watershed focus). In the alternative, the SJWC requests that, at a minimum, the “Strategy” statement of Work Element 8 be redrafted to indicate that the state encourages the development of regional and basin-wide planning initiatives by regional water quality management agencies, as contemplated by federal water quality management plan regulations.

Work Element 10. The SJWC believes NMED’s proposal for Work Element 10 is flawed because it describes a protocol for testing acute standards, not the chronic standards at the heart of the human health criteria adopted by the WQCC. As Mr. Kirkpatrick testified during the WQCC’s March 2002 hearing on NMED’s human health standards petition, the SJWC is concerned about the use of a single grab sample to determine exceedences of human health standards because human health standards are *chronic* standards (human health criteria represent ambient pollutant concentrations that are acceptable based on a lifetime (70 years) of exposure). Therefore, basing compliance with human health standards on a single grab sample is unwarranted. Similar concerns were raised by Los Alamos National Laboratory (“LANL”). Further, NMED testified that it never relies on a single grab sample but rather takes up to seven follow-up samples *during different site visits* over time before determining that a water quality standard has been violated (testimony of Steve Pierce at 90:5-20; 508:12-509:11).

It is my understanding that, during the WQCC’s May 14, 2002 deliberation of NMED’s human health standards petition, the WQCC recognized the SJWC’s concerns, discussed the fact that human health standards are not acute standards (but rather are based on bioaccumulation and fish consumption), and decided that determining compliance with human health standards based on a single grab sample would be inappropriate. For that reason, the WQCC adopted the following language for section 20.6.4.11.D NMAC, which both indicates that multiple samples are required and permits the WQCC to define the required sampling protocol in the Water Quality Management Plan:

- D. Compliance with water quality standards for the protection of human health shall be determined from the analytical results of representative grab sampling, as defined in the Water Quality Management Plan.

Through its proposed Work Element 10, NMED seeks WQCC adoption of a “grab sample” definition that purportedly implements the WQCC’s position with respect to the method for determining violations of human health standards. However, the SJWC believes that NMED’s proposal fails to resolve the concern expressed by both the WQCC and the SJWC that use of a “single” grab sample is inappropriate.

NMED's proposal, which unfortunately is a better protocol for acute standards, sets forth the following protocol for "determination of compliance with water quality standards human health criteria":

- 1) Sampling for determination of compliance with water quality standards human health criteria shall be accomplished as follows:
 - a) **Perennial Waters:** A minimum of two individual grab samples, *separated in time by no less than 15 minutes*, shall be taken during the *same sampling event* from the same location. For the purpose of determining noncompliance, the analytical results of 2 or more of these samples must be greater than the applicable human health criteria. Results of all grab samples shall be recorded and reported.
 - b) **Ephemeral Waters:** A minimum of two individual grab samples, *separated in time by no less than 15 minutes*, shall be taken during the *same ephemeral flow event* from the same location. For the purpose of determining noncompliance, the analytical results of 2 or more of these samples must be greater than the applicable human health criteria. Results of all grab samples shall be recorded and reported.
- 2) Sampling and analysis shall be in accordance with the SWQB's current QAPP.

(Emphasis added.)

While this definition alleviates concerns about the validity of any single sample, it fails to address that fact that, because human health standards are *chronic* standards, compliance should be based on multiple samples over time. The use of two samples taken within 15 minutes of each other during the same sampling event (for perennial waters) or during the same flow event (for ephemeral waters) to determine compliance essentially means that compliance will be based on a single sample. For example, this testing protocol would do nothing to protect against erroneous violation determinations in situations like the one discussed during LANL's hearing testimony, where one sample taken during a storm event immediately after the Cerro Grande Fire showed a significant violation of the newly adopted dioxin and PCB standards (testimony of C. Nylander at 358:11, 359:15-361:15).

For all these reasons, SJWC proposes that the following language be added to NMED's Work Element 10 proposal:

a) **Perennial Waters:** If both samples show a violation of human health criteria, two individual grab samples shall be taken between 90 and 180 days after the first samples. If both of these later individual grab samples exceed the same human health criteria as the first samples, then this shall constitute grounds for determining non-compliance for those specific human health criteria.

b) **Ephemeral Waters:** If both samples show a violation of human health criteria, two individual grab samples shall be taken between 90 and 180 days after the first samples. If both of these later individual grab samples exceed the same human health criteria as the first samples, then this shall constitute grounds for determining non-compliance for those specific human health criteria.

c) Grab samples shall be taken during the normal range of flow conditions experienced on a perennial or ephemeral stream. Samples shall not be taken during extreme high or low flow conditions, periods of storm runoff in perennial streams, or unusual events such as chemical spills. Flow conditions at the time a sample is taken shall be recorded and reported with the results of the chemical analyses.

Such language would make it clear that no standard will be violated because of an isolated storm event or other incident that, while perhaps causing a violation of an acute standard, will not affect human health over a lifetime of fish consumption.

Thank you for your consideration of these comments.

Sincerely,

Jolene L. McCaleb

cc: L. Randy Kirkpatrick